P.F. No. 263/07
Presented by Shri D.K. Vishwas
dated 13/2/07

SINGLE BENCH

(5) (7)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

(CHHATTISGARH)

WRIT PETITION (S) NO. 803 OF 2007

PETITIONER

Smt. Mamta Patel Wife of Shri Pradeep Kumar, aged about 32 years, Resident of Agariyapara Goverdhanpur, Village Panchayat Sondeeha, Janpad Panchayat Pratappur, District Surguja (C.G.).

VERSUS

RESPONDENTS :

1. State of Chhattisgarh, Through: The Secretary, Department of Women and Child Development, D.K.S. Bhawan, Raipur (C.G.).

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2. The Collector, Ambikapur, District Surguja (C.G.).

3. The District Programme Officer, Woman and Child Development, Ambikapur, District Surguja (C.G.).

4. The Project Officer, Women and Child Development, Ambikapur, District Surguja (C.G.).

5. The Chief Executive Officer, Janpad Panchayat Pratappur, District Surguja 9C.G.).

(6) (2)

6. Village Panchayat Sondeeha, Through : The Sarpanch, Village Panchayat Sondeeha, Janpad Panchayat Pratappur, District Surguja (C.G.).

7. Smt. Rashmi Sachan, Wife of Shri Sanjay Patel, Resident of Goverdhanpur, Village Panchayat Sondeeha, Janpad Panchayat Pratappur, District Surguja (C.G.).

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI, PROHIBITION ETC.

(55)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (S.) NO.796 OF 2007

Petitioner : Smt. Kaleshwari

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION (S.) NO.797 OF 2007

Petitioner : Smt. Gulapati

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION (S.) NO.799 OF 2007

Petitioner : Smt. Urmila

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION (S.) NO.800 OF 2007

Petitioner : Smt. Kiran Devi

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION (S.) NO.801 OF 2007

Petitioner : Smt. Sheela Bai

versus

Respondents : State of Chhattisgarh and others

(54)

WRIT PETITION (S.) NO.802 OF 2007

Petitioner : Smt. Chandrakali

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION (S.) NO.803 OF 2007

Petitioner : Smt. Mamta Patel

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION (S.) NO.804 OF 2007

Petitioner : Mst. Saroj Jaiswal

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION (S.) NO.805 OF 2007

Petitioner : Smt. Shivmati

versus

Respondents : State of Chhattisgarh and others

WRIT PETITION (S.) NO.806 OF 2007

Petitioner : Smt. Sushma Singh

versus

Respondents : State of Chhattisgarh and others

Present : Mr. V.K.Pandey, counsel for the petitioners.
Mr. V.V.S.Moorthy, Deputy Advocate General with Mr. Arvind Dubey, Panel Lawyer for the State/respondents.
None appears for other respondents.

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(55)

ORDER

(Passed on 9th Day of February, 2007)

The common question of law involved in the present writ petitions is as to whether the District Collector has power to appoint Anganbadi Workers. The facts of the writ petitions are also similar. Thus, the present writ petitions are being clubbed together and being considered and decided by a common order.

2. The facts, in nutshell, are that the petitioners along with others submitted their applications for appointment on the post of Anganbadi Workers at various places in Ambikapur, District Surguja. The Panchayat, on the basis of a resolution, prepared a panel. The said panel was examined by the Project Officer, Woman and Child Development, Ambikapur, District Surguja and was placed before the Chief Executive Officer, Janpad Panchayat, Pratappur, who approved the list of candidates for appointment and sent the entire records to the Collector, Ambikapur, District Surguja. The District Programme Officer, Woman and Child Development Department, Ambikapur, District Surguja, under the order of the Collector, issued an appointment order on 18-1-2007 (P-1).

3. The main contention of Mr. V.K.Pandey, learned counsel appearing for the petitioners is that the impugned appointment order dated 18-1-2007 (P-1), wherein the petitioners did not find place, was passed by an incompetent officer as neither the Collector nor the District Programme Officer, Woman and Child Development

Department, Ambikapur is competent to appoint Anganbadi Workers/Sahayikas.

4. Learned counsel appearing for the petitioners relied on a circular dated 6-1-2000 issued by the Woman and Child Development Department, Government of Madhya Pradesh. The said circular provides for appointment of Anganbadi Workers and Sahayikas by Janpad Panchayats in rural areas and by the concerned Municipal Corporation/Municipality/Nagar Panchayat in urban areas. It is further provided in the circular dated 6-1-2000 that this circular is in continuation of the earlier circular of the Government for appointment. The said circular dated 6-1-2000 refers to earlier circular dated 27-5-1996. Thereafter, one more circular dated 29-10-1996 was issued by the Government in continuation of the earlier circular dated 27-5-1996, whereunder in para 6, it is provided that the Janpad Panchayat should pass the appointment order within a period of three weeks on receipt of proposal. In default, the appointment order can be passed by the concerned Child Development Programme Officer on approval from the Collector.

5. The relevant part of the circular dated 27-5-1996 issued by the Woman and Child Development Department, Government of Madhya Pradesh reads as under :-

"विषय– आंगनवाड़ी कार्यकर्ताओं एवं सहायिकाओं की नियुक्ति ।

संदर्भ– आयुक्त, महिला एवं बाल विकास का आदेश कमांक/आईसीडीएस/ए.एस.ओ. –पी/95/3732/दिनांक 26.9.95 एवं

(57)

कमांक/आईसीडीएस/ए.एस.ओ.–पी/822,
दिनांक 15.5.96 ।

राज्य शासन द्वारा निर्णय लिया गया है कि आंगनवाड़ी कार्यकर्ताओं एवं सहायिकाओं की नियुक्ति के अधिकार अब ग्रामीण क्षेत्रों में जनपद पंचायतों को व शहरी क्षेत्र में संबंधित नगर निगम/नगर पालिका/नगर पंचायत को हों । इस संबंध में आयुक्त, महिला एवं बाल विकास के उपरोक्त सन्दर्भित आदेशों के साथ–साथ राज्य शासन द्वारा पूर्व में जारी समस्त निर्देशों को एतद् द्वारा निरस्त करते हुए अब आंगनवाड़ी कार्यकर्ताओं एवं सहायिकाओं की नियुक्ति के संबंध में निम्न आदेश प्रसारित किये जाते हैं :–"

6. The relevant parts of the circular dated 29-10-1996 issued by the Woman and Child Development Department, Government of Madhya Pradesh reads as under :-

"विषयः– समेकित बाल विकास सेवा परियोजना अन्तर्गत आंगनबाड़ी कार्यकर्ताओं एवं सहायिकाओं की नियुक्ति ।

सन्दर्भः– विभाग का पत्र कमांक–एफ 8–3/78–3/95/50–2 दिनांक 27.05.96

विभाग के उपरोक्त सन्दर्भित पत्र दिनांक 27.05.96 द्वारा समेकित बाल विकास सेवा परियोजना अन्तर्गत आंगनबाड़ी कार्यकर्ताओं एवं सहायिकाओं की नियुक्ति के अधिकार ग्रामीण क्षेत्रों में संबंधित नगर निगम/नगर पालिका/नगर पंचायतों को दिये गये हैं । इन आदेशों के तारतम्य में अब निम्न और निर्देश प्रसारित किये जाते हैं :–"

"6. जनपद पंचायत द्वारा आंगनबाड़ी कार्यकर्ता एवं सहायिकाओं की नियुक्ति स्वीकृत पैनल प्राप्त होने के एक सप्ताह के अंदर किये जाने के निर्देश थे । इस संबंध में अब निर्णय लिया गया है कि जनपद पंचायत के लिये यह

बंधनकारी होगा कि नियुक्ति हेतु प्रस्ताव प्राप्त होने के 3 सप्ताह में नियुक्ति आदेश प्रसारित कर दिये जायें । यदि जनपद पंचायत के द्वारा इस अवधि में नियुक्ति संबंधी निर्णय नहीं लिया जाता है तो कलेक्टर के अनुमोदन से आंगनबाड़ी कार्यकर्ताओं एवं सहायिकाओं की नियुक्ति संबंधित बाल विकास परियोजना अधिकारी द्वारा की जा सकेगी ।"

7. The relevant part of the circular dated 6-1-2000 issued by the Woman and Child Development Department, Government of Madhya Pradesh reads as under :-

"विषयः— आंगनबाड़ी कार्यकर्ताओं एवं सहायिकाओं की नियुक्ति ।

संदर्भः— इस विभाग का पत्र कमांक एफ 8—3/95/50 दिनांक 27.05.1996

राज्य शासन द्वारा निर्णय लिया गया है कि आंगनबाड़ी कार्यकर्ताओं एवं सहायिकाओं की नियुक्ति के अधिकार ग्रामीण क्षेत्रों में जनपद पंचायतों को व शहरी क्षेत्र में संबंधित नगर निगम/नगर पालिका/नगर पंचायत को है । आंगनबाड़ी कार्यकर्ताओं एवं सहायिकाओं को नियुक्ति द्वारा पूर्व में निम्न नियुक्ति संबंधी आदेश प्रसारित किये गये थेः—"

8. On perusal of the said circulars (supra), it is evident that in case of delay caused by the Janpad Panchayat in issuing appointment order within a period of three weeks from the receipt of a proposal, the Child Development Programme Officer, on approval by the Collector, can pass the appointment order.

9. In the present case, it appears that the impugned appointment order was passed by the District Programme Officer, Woman and Child Development Department, Ambikapur, District Surguja on approval by the Collector. The order is accordingly passed by a competent officer.

10. With regard to other allegations, the Anganbadi Workers are admittedly employees of the Panchayats as their appointments are made by the Janpad Panchayats on proposal made by the concerned Gram Panchayats.

11. The terms and conditions of the services of the petitioners are governed by the Madhya Pradesh/Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. The Madhya Pradesh/Chhattisgarh Panchayats (Appeal and Revision) Rules, 1995 (henceforth 'the Rules, 1995'), framed in exercise of the powers conferred by sub-section (1) of Section 95 read with Section 91 of the Madhya Pradesh/Chhattisgarh Panchayat Raj Adhiniyam, 1993 (No.1 of 1994) provides for appeal or revision. Rule 3(b) of the Rules, 1995 clearly provides that in the case of an order passed by the Collector under any provision of the Act or rules or bye laws made thereunder to the Commissioner. The word "Commissioner" in the Rules, 1995 has been substituted by the words "Director of Panchayat" by a notification dated 13-5-2003 passed in exercise of the powers conferred by sub-section (1) of Section 95 read with Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (No.1 of 1994). Thus, the appeal against any order passed by the Collector is maintainable before the Director of Panchayat, Government of Chhattisgarh.

12. The petitioners have statutory alternative remedy available by way of statutory appeal under Rule 3 of the Rules, 1995 to the Director of Panchayat, Government of Chhattisgarh. The petitioners, without exercising of that alternative remedy of statutory appeal, have approached this Court directly.

13. It is well settled principle of law that the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, should refrain from entertaining a writ petition on the ground of availability of an alternative remedy, except in cases where the Court or the Tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of principles of natural justice. (See ***State of H.P. and others*** vs. ***Gujarat Ambuja Cement Ltd. and another***[1], ***Sanjana M. Wig (Ms)*** vs. ***Hindustan Petroleum Corpn. Ltd.***[2], ***L.K. Verma*** vs. ***HMT Ltd. and another***[3] and ***A.P. Foods*** vs. ***S. Samuel and others***[4]).

14. Applying settled position of law to the facts of the present cases, there is no challenge of the competence of the Tribunal/Authority or that principles of natural justice have not been followed or this is a case of infringement of fundamental right or any provision of the law. If there is any other ground available, the petitioners are at liberty to avail statutory appeals.

15. Thus, the writ petitions are dismissed as being not maintainable in view of availability of effective statutory appellate forum. In the event, an appeal is filed before the appellate authority, this order

shall not come in the way of the disposal of the appeal in accordance with law. No order as to costs.

16. A copy of this order be placed on the record of the connected writ petitions.

Sd/-
Satish K. Agnihotri
Judge

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1 (2005) 6 SCC 499
2 (2005) 8 SCC 242
3 (2006) 2 SCC 269
4 (2006) 5 SCC 469

Gopal